SUPREME COURT, U. S.
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IN THE

# Supreme Court of the United States

No. 359

JOHN F. GRAHAM,

*Petitioner,*

v.

THE HON. HAROLD H. GREENE
THE HON. CATHERINE B. KELLY
THE HON. TIMOTHY MURPHY
DALE C. CAMERON, M.D.
and
THE UNITED STATES OF AMERICA,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

*To the Honorable, The Chief Justice, and The Associate Justices of The Supreme Court of the United States.*

The petitioner, *pro se*, respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit which upheld the decree in favor of respondents and dismissed petitioner's actions for malicious prosecution, false imprisonment, negligent treatment, cruel and unusual punishment, and deprivation of civil rights and, in support of his petition, does show:

1. The opinion of the United States Court of Appeals for the District of Columbia Circuit is not reported as of this date and the judgment is appended hereto on page 9, *infra*.

2. The judgment of the United States Court of Appeals for the District of Columbia Circuit upholding the judgment of the United States District Court for the District of Columbia and remanding for entry of a judgment of dismissal is dated May 2, 1968.

## JURISDICTION

The jurisdiction of this Honorable Court to review by way of certiorari is based on United States Code, Title 28, Sections 1254(1) and 2101(c), and Supreme Court Rules, Rule 19, Subsection 1(b).

## QUESTIONS PRESENTED

1. Is a committing magistrate empowered to act as a court in ordering accused committed to a hospital for mental examination?

2. Is a State or municipal court empowered to determine whether accused is competent to stand trial in a Federal court?

3. Is a judge of an inferior court empowered to imprison, without admitting to bail, a person accused of an offense against the laws of the United States prior to grand jury indictment?

4. Where a Government psychiatrist testifies that accused is capable of understanding the nature of the charges which may be lodged against the accused and offers no evidence that the accused is dangerous to himself and others, is a State (or municipal) court empowered to commit the accused to a mental hospital for treatment?

5. Is a judge of an inferipr court acting outside of his jurisdiction immune from liability to the injured party?

6. Is a prosecuting attorney acting outside of his jurisdiction protected by color of law?

7. Is the superintendent of a mental hospital immune from liability to a party falsely imprisoned?

8. Is the United States immune from liability for personal injury caused by the negligent or wrongful act of a Government employee?

9. Does a complaint alleging malicious prosecution, false imprisonment, negligent treatment, cruel and unusual punishment and/or deprivation of civil rights state a claim upon which relief can be granted?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

**United States Constitution:**

Article III, Section 2
Article IV, Section 2
Fifth Amendment
Sixth Amendment
Eighth Amendment
Fourteenth Amendment, Section 1

**United States Code:**

18 U.S.C. 876
18 U.S.C. 3041
18 U.S.C. 3231
18 U.S.C. 4244
28 U.S.C. 1346(b)
28 U.S.C. 2674
42 U.S.C. 1983

**District of Columbia Code:**

11 D. C. Code 521(a)
23 D. C. Code 103
24 D. C. Code 301

United States Statutes at Large:

2 Stat. 107, §11
12 Stat. 580, §6
31 Stat. 1190, §3
35 Stat. 623, c. 134
56 Stat. 190, c. 207
76 Stat. 1171

## STATEMENT OF THE CASE

In an act which petitioner considered one of civil disobedience but which, because it was a lone gesture with less than cosmic significance, a more reasonable man would consider the act of a nut, petitioner mailed a threatening letter to a person he believed had taken away his daughter for the purpose of marriage, such taking away being a felony under common law. 3 E. 1.13; 3 H. 7.2. Petitioner sent a copy of the said threatening letter to a special agent of the FBI, and voluntarily submitted to arrest on November 30, 1965. The question here, however, is not the rationality of petitioner but whether a committing magistrate is empowered to detain, for whatever reason, any person accused of a felony, rather than to admit him to bail and bind him over to the trial court.

Pursuant to Rule 5(a), Federal Rules of Criminal Procedure, petitioner was taken before a judge of the District of Columbia Court of General Sessions, which judge, pursuant to 18 U.S.C. 3231 and 11 D. C. Code 963(c), was sitting as a committing magistrate. Instead of discharging the petitioner or admitting him to bail and binding him over to the trial court (U. S. District Court), the said committing magistrate ordered petitioner committed to D. C. General Hospital for a 30-day mental examination. At the expiration of the thirty days, petitioner was taken before a judge of the District of Columbia Court of General Sessions. Although petitioner resisted the Assistant United

States Attorney's attempts to foist a judicial declaration of insanity on him; although petitioner's wife, to whom petitioner had been married for 19 years, testified as to petitioner's sanity, and although a Government psychiatrist categorically stated under oath that petitioner understood the charges against him, the aforesaid judge of the District of Columbia Court of General Sessions ordered petitioner committed to St. Elizabeths Hospital as a person "of unsound mind and mentally incompetent to stand trial and unable to consult with counsel to properly assist in his own defense."

Petitioner was admitted on January 4, 1966, to St. Elizabeths Hospital where, on that date, the examining psychiatrist found petitioner to be "excellently oriented" with "no impairment of his intellectual functioning." Shortly after admittance to St. Elizabeths Hospital petitioner became seriously ill, which illness may have been caused by pneumonia or by the administration of a potent drug which is known to have 26 possible side-effects.

Petitioner was indicted by a grand jury on February 24, 1966; on or about March 15, 1966, petitioner was declared by St. Elizabeths Hospital physicians to be competent to stand trial; and on March 31, 1966, an order was entered by the court for petitioner's immediate arraignment. Because it was claimed by the United States Attorney that a St. Elizabeths psychiatrist had declared petitioner to be suffering from a mental disease and to be "extremely dangerous", petitioner requested a judicial declaration of his competency. On May 23, 1966, a St. Elizabeths Hospital physician testified that petitioner was not considered dangerous, and petitioner was forthwith arraigned; entered a plea of not guilty to the indictment, and was released on his own recognizance. On October 19, 1966, the indictment was dismissed on motion of the Government.

On May 22, 1967, petitioner filed actions against the respondents in the United States District Court for the District of Columbia, which actions were dismissed on September 22, 1967, on the grounds that (1) the respondents were immune, and (2) petitioner had failed to state a claim upon which relief could be granted. In its judgment against petitioner the United States Court of Appeals for the District of Columbia Circuit evidently has decided Federal questions in a way in conflict with applicable decisions of this Court, and has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by a lower court as to call for an exercise of this Court's supervision. Jurisdiction was conferred on the United States District Court for the District of Columbia by 18 U.S.C. 1331(a).

## ARGUMENT FOR GRANTING THE WRIT

### Decisions of Federal Questions In Conflict With Applicable Decisions of This Court

#### Psychiatry, Morality and The Law

Irrepressible faith in necromancy, it seems, dwells eternal in the human heart. In Sir Matthew Hale's day educated men sought spiritual and material salvation in astrology and alchemy; today educated men seek absolution in psychiatry. To psychiatry's adherents the fact that the records of modern mental hospitals show a discharge rate lower than that of similar hospitals in the 18th century is without significance; society must have its panaceas and psychiatry fills all the necessary requirements.

This is not to disparage psychiatry; certainly no branch of medicine is of more importance than that devoted to the human mind, and unquestionably the world is deeply indebted to the great psychiatric specialists of the past; e.g., Tyson, Willis, Crichton, Woodward, Mitchell and Spitzka. But when psychiatry is, by its enthusiasts, represented as a substitute for law and morality, it is only a matter of time before psychiatry itself will fall victim to public disillusionment. And, tragically, this disillusionment will be precipitated in considerable measure by those psychiatric diagnosticians who, in criminal cases, pretend scientific omniscience but who, as it was once unkindly observed by the eminent Adolf Meyer, are in reality "racketeers."[1]

In any organized society the prestige of government is predicated on the power of punishment, and political philosophy has devised no better agent of punishment than the courts. In recent years, however, the courts have shown an increasing tendency in criminal cases to surrender their primary responsibility, the disciplining of society, to psychiatry, bestowing upon the psychiatrists the functions of judge, jury and jailer. This tendency is no more evident than in the District of Columbia, and any visitor to the District's weekly habeas corpus hearings can observe judges returning those "acquitted" by reason of insanity to continuing incarceration in St. Elizabeths, with no more evidence of the habeas corpus petitioner's insanity than a psychiatric trainee's say-so that the petitioner suffers from "anti-social reaction."

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[1]Cf. Sol Rubin, *Psychiatry and Criminal Law – Illusions, Fictions and Myths,* 1965; Alan M. Dershowitz, "Psychiatry in the Legal Process: A knife that cuts both ways," 4 Trial 29; Percival Bailey, M.D., "The Great Psychiatric Revolution," 113 Am. J. Psychiat. 387.

In an article titled "The Insanity Plea and the Insanity Verdict" (40 Temp. L. Q. 271) Thomas S. Szasz, M.D., professor of psychiatry at the Upstate Medical Center, Schenectady, N. Y., states:

> [O]ur age seems passionately devoted to *not* confronting problems of good and evil, and prefers, therefore, the rhetoric of medicine to the rhetoric of morals. It is as if modern judges had acquired the disability their predecessors had attributed to M'Naghten. M'Naghten, we are told, could not distinguish between right and wrong. Many judges, we may infer from their words and acts, prefer not to distinguish between right and wrong. They speak of mental illness and mental health rather than of good and evil, and mete out the penalty of commitment rather than of imprisonment.[2]

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[2]Cf. Thurman Arnold, *The Symbols of Government*, 1948, p. 130:

> For most persons, the criminal trial overshadows all other ceremonies as a dramatization of the values of our spiritual government, representing the dignity of the State as an enforcer of law, and at the same time the dignity of the individual when he is an avowed opponent of the State, a dissenter, a radical, or even a criminal. So important is the criminal trial to the whole ideological structure of government that its disappearance in favor of an efficient and speedy way of accomplishing the incarceration of persons supposed to be dangerous to the social order is always a sign of psychological instability of a people. . . . Society thinks it knows exactly what it wants to do, and hence has little patience with a process which gives dissenters from the social order a chance to air their opinions, or justify their antisocial acts.

(Continued)

The essential immorality of such procedure is patent, for, by meting out ~~the~~ penalty of commitment rather than of imprisonment the courts are surrendering to the psychiatrists the absolute power of punishment. From the moment of commitment the duration of the malefactor's imprisonment is solely within the discretion of the psychiatrists; there is no appeal from their verdict, and, by the simple declaration that the malefactor is "sick", the psychiatrists can keep him imprisoned for the rest of his life. This is accomplished under color of law (cf. 24 D. C. Code 301) and even where, as in this petitioner's case, the petitioner was arrested for an offense against the United States, local law is stretched to encompass those over whose person the courts have jurisdiction, no matter what the nature of the offense.

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[2](Continued)

See also Philip Q. Roche, M.D., *The Criminal Mind*, 1958, p. 79:

> Every criminal trial conveys a moral lesson. . . . [T]his function of the criminal trial is vital to the maintenance of a moral order; the actual events of a particular crime are important only to the extent that they set again in motion a process of realignment of social values. The parties to the actual crime pass into obscurity; the moral remains.

It is petitioner's observation that, while there may be social value in taking the criminally inclined out of circulation by commitment to a mental institution for an indeterminate period, by such commitment the crime is made to fit the punishment. To a judge oriented by former Department of Justice employment to the prosecution point of view this may be an appropriate method of disposing of criminals; unhappily it does not conform to the Constitution. In any event, as in petitioner's case, detention for six months between arrest and arraignment seems a bit much.

## Coram Non Judice

Tempted as he may be to challenge the constitutionality of 24 D. C. Code 301, the statute upon which the Government relies to justify petitioner's commitment to D. C. General Hospital and St. Elizabeths, petitioner does not question the validity of the statute, but questions rather whether a local law can be invoked to imprison a person arrested for an offense against the United States. If this be permissible under the Constitution then it is equally permissible to deprive citizens of the District of Columbia of all privileges and immunities constitutionally guaranteed to citizens of every State.[3]

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[3]In a hearing on H.R. 6585 (S. 2274), the bill which later became 24 D. C. Code 301, Dr. John D. Schultz, then chief psychiatrist of the D. C. General Hospital, on June 8, 1955, told the Subcommittee on Crime Investigation of the House Committee on the District of Columbia:

> I have had several cases like that, and I could cite them by name now, where the family said, "all right, the only way we can get this man into the hospital is to bring a charge against him" and they bring a charge of disorderly conduct or some disturbance, or fracas in the household, and they bring a charge against him. I have had persons tell me this was the only way they could get the patient into the hospital . . . One of the problems is how to get these people into the hospital. It is for that reason that those charges are presented, and we get into a situation of having to use a criminal procedure in order to get a sick person into the hospital. However, we do have ways of handling that. The usual procedure is to have the charges dropped after the person has been at the hospital, and then commit the man through a civil proceeding.

(Continued)

That the District of Columbia, as a political entity, is a State there can be little question. For more than 160 years this Court has so held it. *Hepburn v. Ellzey*, 2 Cr. (6 U.S.) 443, 452; *Metropolitan Railroad Co. v. District of Columbia*, 132 U.S. 1, 9; *Geofroy v. Riggs*, 133 U.S. 258, 268-269; *Talbott v. Silver Bow County*, 139 U.S. 438, 444-445. If the District of Columbia is a State, then a District of Columbia court cannot take cognizance of an offense against the United States (Constitution, Article III, Section 2) for which the prisoner has not been indicted (Fifth Amendment), nor can the consent of the parties give jurisdiction to such a court. (*Capron v. Van Noorden*, 2 Cr. (6 U.S.) 125, 126).

It is an established rule that all proceedings in a court without jurisdiction of the offense are *coram non judice* and the law does not protect an officer who executes a void process. *Elliott v. Peirsol* 1 Pet. (26 U.S.) 328, 340; *Dynes v. Hoover*, 20 How. (61 U.S.) 68, 80; *Wise v. Withers*, 3 Cr. (7 U.S.) 330, 337. It is also an established rule that a judicial officer is liable to a civil action where he exercises a usurped authority. *Randall v. Brigham*, 7 Wall. (74 U.S.) 523, 535-536; *Bradley v. Fisher*, 13 Wall. (80 U.S.) 335, 352; *Floyd & Barker*, K.B., 12 Co. 23, 77 Eng. Rep. 1305, 1307; *Case of the Marshalsea*, K.B., 10 Co. 68b, 77 Eng. Rep. 1027, 1035, 1038; 2 Cooley, Torts (4th ed.) §315; 48 C.J.S. §63, p. 1032.

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[3](Continued)
At the House Subcommittee hearing, Vernon L. West, then Corporation Counsel for the District of Columbia, told the subcommittee that he fully approved of the proposed statute "and, in fact, my office drafted the present bill."

## Departure From the Accepted and Usual Course of Judicial Proceedings and Sanction of Such Departure by a Lower Court

### A Committing Magistrate Is Not a Court

Although the Government is of the opinion that petitioner was properly committed to D. C. General Hospital by a committing magistrate pursuant to 24 D. C. 301, the Government has submitted no authority to show that a committing magistrate is a court. Yet 24 D. C. Code 301 specifies that "Whenever * * * it shall appear to the court * * * that the accused is of unsound mind * * * the court may order the accused committed to the District of Columbia General Hospital * * * ."

If a committing magistrate is not a court but nonetheless exercised judicial discretion in ordering petitioner committed to D. C. General Hospital, pursuant to 24 D. C. Code 301, all proceedings in the D. C. Court of General Sessions in which petitioner was involved were void *ab initio*, and, insofar as petitioner was denied a speedy trial, were unconstitutional. Sixth Amendment; 18 U.S.C. 3041; 11 D. C. 963(c); *Mance v. Cameron*, D.C. D.C., 260 F. Supp. 851. It is also established by statute (18 U.S.C. 3231; 11 D.C. Code 521) that the U.S. District Court has original jurisdiction of an offense against the laws of the United States where the punishment may be imprisonment for more than one year. (The offense for which petitioner was indicted is punishable, pursuant to 18 U.S.C. 876, by imprisonment for five years).

Historically the judicial authority of judges of the D. C. Court of General Sessions is that of justices of the peace, and no statute subsequent to 1801 has altered their

status. 2 Stat. 107, §11; 12 Stat. 580 §6; 31 Stat. 1190, §3; 35 Stat. 623, c. 134; 56 Stat. 190, c. 207; 76 Stat. 1171. Thus they are not immune to a civil action when they act without jurisdiction of the offense. By the same token prosecuting attorneys acting outside their jurisdiction cannot be protected by color of law, and when they so act they are liable for damages. *Cooper v. O'Connor*, 69 U.S. App. D. C. 100, 99 F.2d 135, 138; *Lewis v. Brautigam*, C.A. 5th, 227 F.2d 124, 127; *Suhre v. Knott*, C.C.A. Tex., 193 S.W. 417, 419 ("Whenever a wrongful prosecution is had and damage is caused to a man's reputation, to his person, or to his property, an action of malicious prosecution will lie.")[4]

From the words and acts of the Assistant United States Attorney in his successful attempt to effect petitioner's commitment to St. Elizabeths it would appear that the Government considers anyone insane whose conduct does not meet with its approval. According to the official transcript of the D. C. Court of General Sessions proceedings, petitioner on the witness stand was questioned by the Assistant United States Attorney, one Robert K. Webster, as follows:

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[4]Cf. Abe Fortas, *Concerning Dissent and Civil Disobedience*, 1968, p. 33:

> [Officers of the law] are subject to the rule of law, and if they exceed the authorized bounds of firmness and self-protection and needlessly assault the people whom they encounter, they should be disciplined, tried, and convicted. It is a deplorable truth that because they are officers of the state they frequently escape the penalty for their lawlessness.

Q. How do you feel it would further your purpose to continue your daughter's education to go to trial on these issues here?

A. The issue is very simple. The issue is: I wrote this letter to [FBI agent] Blazek knowing it was in violation of a Federal statute. It is my hope my being brought to trial on this issue will at least inspire [my daughter] to realize that we actually love her so much that we want her to go to college. I don't know how you get through to someone when someone else is obstructing a person; how do you get through a mother's love to a child?

Q. You still feel that way today?

A. Feel what way?

Q. That through going to trial as a result of deliberately writing a letter to the FBI and other letters to the environment in which your daughter lives, which letters are in violation of the law. By going to trial you will demonstrate to your daughter –

A. I have demonstrated.

Q. I am asking you if that is the way you feel today?

A. I would like to answer the question.

Q. I am asking you for a yes or no answer.

A. Yes.

MR. WEBSTER: I have no more questions.[5]

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[5]There was no element of extortion in the threatening letter, a copy of which petitioner sent to the FBI, and, inasmuch as petitioner was seeking, by writing the threatening letter, to restore to a heart-broken mother the child who had been taken from her, it is difficult to determine how petitioner's commitment to St. Elizabeths was supposed to assuage the mother's grief.

If, as petitioner infers, the Assistant United States Attorney was promising petitioner amnesty if petitioner would forego his right to trial, the Assistant United States Attorney's acts establish a dangerous precedent. In *Fletcher v. Fletcher*, Ell. & Ell. 420, 423-424, 120 Eng. Rep. 967, 968, Lord Chief Justice Campbell said:

> By the common law of England no person can be imprisoned as a lunatic unless he is actually insane at the time * * * It would place in jeopardy the liberty of many persons of eccentric habits, though in perfect possession of their faculties. There must be actual insanity to justify commitment. The defendant relies on the fact * * * that proper medical certificates had been given * * * That is no defense at common law; * * * while it protects duly authorized persons acting under certificates and an order for confinement of a lunatic, gives no protection to the person making the order, and therefore shows that he is not protected unless the person confined is actually insane.

**The Superintendent's Liability**

If a prosecuting attorney is not immune when he acts outside his jurisdiction, neither is the superintendent of a mental hospital when he executes a judgment of sentence of a court without jurisdiction. *Wise v. Withers; Elliott v. Peirsol; Dynes v. Hoover, supra;* 1 Cooley, Torts (4th ed.) §111, p. 357, citing *Telefsen v. Fee*, 168 Mass. 188, 46 N. E. 562, 564:

> An officer is bound to know the law, and to know the jurisdiction of the court whose officer he is. * * * If, therefore, * * * the court has no jurisdiction in the matter * * * it would seem that the officer is not protected. There are many authorities to this effect. [Cited are ten cases].

In *Van Deusen v. Newcomer*, 40 Mich. 90, 136-137, where the superintendent (Van Deusen) had executed the commitment order of a magistrate, Mr. Justice Cooley said:

> [T]he question * * * must be whether the superintendent was vested with any authority to pass judgment upon [defendant in error's] sanity in a manner that can protect him. * * * I need say no more than this, that neither the constitution nor the statute has undertaken to give him the authority, nor in my opinion could it be given to him or to any other tribunal with the privilege of proceeding secretly, and without giving the alleged *non campos* and his friends the opportunity to produce evidence to show that the allegation of insanity was unfounded. The privilege of defending the intellect is as sacred as the privilege of defending life itself, and it is not to be lightly assumed that the Legislature has ever intended to confer it upon a single officer *ex parte*. The powers actually conferred upon this office are clearly administrative and limited, and like all corresponding officers, he must at his peril keep within their limits.[6]

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[6] At pp. 127-128, Mr. Justice Cooley said:

> I cannot admit that because one is a practitioner of medicine, it is therefore proper or safe to suffer him to decide upon mental disease, and consign people to the asylum upon his judgment or certificate. While the high character of a large proportion of the medical profession, their learning, their self-devotion and humanity, entitle them to our highest respect and confidence, and give to their conclusions in questions of medical science a weight that must generally challenge conviction, we cannot for a moment shut out from view the fact that the law

(Continued)

In the opinions below it is held that the United States is not liable for negligent and wrongful acts of Government employees acting within the scope of their employment. In his complaint for cruel and unusual punishment and negligent treatment petitioner alleged that, although guiltless of crime, he had been confined at St. Elizabeths Hospital in an old and dilapidated building with divers diseased and disordered persons without any reasonable or probable cause whatsoever and that while petitioner was imprisoned he became critically ill with pneumonia and physicians of the said hospital administered to petitioner an anti-depressant drug which seriously aggravated petitioner's condition.

Petitioner's action, however, was dismissed on motion of the Government, which dismissal is contrary to the provisions of 28 U.S.C. 1346(b) and 28 U.S.C. 2674, and this Court's opinion in *Indian Towing Co. v. United States*, 350 U.S. 61, 69.

Although petitioner's actions were dismissed by the District Court for failure to state a claim upon which relief could be granted it would appear from innumerable court opinions that petitioner stated valid claims in his actions against *Greene et al.* (malicious prosecution), *Cameron* (false imprisonment), and the *United States*

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[6](Continued)

throws wide open the doors of that profession, and that the ignorant jostle the learned in entering it, the unworthy have equal rights with the high-minded and humane, and it is not uncommon that the most unfit succeed for a long period in imposing on the public. By no means known to the existing laws can it be rendered reasonably certain that, in the absence of public investigation, questions of insanity will be considered by competent persons and mistakes guarded against by those who are fit to judge.

(cruel and unusual punishment and negligent treatment), and that, if he was improperly committed to St. Elizabeths by a court without jurisdiction, he has a valid claim for deprivation of his civil rights pursuant to 42 U.S.C. 1983.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Honorable Court issue a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit in these causes and this Court should review and reverse the judgment of the Court of Appeals.

JOHN F. GRAHAM
1914 Connecticut Avenue, N. W.
Washington, D. C.

## APPENDIX A

## UNITED STATES COURT OF APPEALS
## FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN F. GRAHAM

v.

THE HON. HAROLD H. GREENE
THE HON. CATHERINE B. KELLY
THE HON. TIMOTHY MURPHY
DALE C. CAMERON, M. D.
UNITED STATES OF AMERICA

[Filed May 2, 1968]

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JUDGMENT

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Senior Circuit Judge, and McGowan and Tamm, Circuit Judges.

These cases came to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION THEREOF, it is ordered and adjudged by the court that the respective judgments of the District Court appealed from in each of the above-entitled cases are confirmed.

Per Curiam

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN F. GRAHAM

v.

THE HON. HAROLD H. GREENE
THE HON. CATHERINE B. KELLY
THE HON. TIMOTHY MURPHY

[Filed September 22, 1967]

JUDGMENT

This cause having come before the Court on defendants' motions to dismiss; on plaintiff's motion for summary judgment; and on plaintiff's motion for production, etc.; the matter having been argued; and the Court being fully advised in the premises,

It is by the Court this 22nd day of September, 1967:

ORDERED, ADJUDGED AND DECREED:

1. That defendants' motions to dismiss be, and hereby are, granted, and,

2. That plaintiff's motion for summary judgment and motion for production, etc., be, and hereby are, denied, and this action is dismissed.

s/ Alexander Holtzoff
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN F. GRAHAM

v.

DALE C. CAMERON, M.D.

[Filed September 22, 1967]

JUDGMENT

This cause having come before the Court on defendant's motion to dismiss or for summary judgment; and on plaintiff's motion for summary judgment; the matter having been argued; and the Court being fully advised in the premises,

It is by the Court this 22nd day of September, 1967,

ORDERED, ADJUGED AND DECREED:

1. That defendant's motion to dismiss be, and hereby is, granted; and

2. That plaintiff's motion for summary judgment be, and hereby is, denied, and this action be dismissed.

s/ Alexander Holtzoff
United States District Judge

B-3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN F. GRAHAM

v.

UNITED STATES OF AMERICA

[Filed September 22, 1967]

JUDGMENT

This cause having come before the Court on defendant's motion to dismiss or for summary judgment; and on plaintiff's motion for summary judgment; the matter having been argued; and the Court being fully advised in the premises.

It is by the Court this 22nd day of September, 1967,

ORDERED, ADJUDGED AND DECREED:

1. That, insofar as recovery is sought for alleged "cruel and unusual punishment" and "imprisonment", defendant's motion to dismiss be, and hereby is, granted;

2. That, insofar as recovery is sought for alleged "negligent treatment", defendant's motion for summary judgment be, and hereby is granted; and

3. That plaintiff's motion for summary judgment be, and hereby is, denied, and this action is hereby dismissed.

s/ Alexander Holtzoff
United States District Judge

## APPENDIX C

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

### UNITED STATES CONSTITUTION

**Article III, Section 2:** The judicial power [of the United States] shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority * * * U.S.C., Vol. 1, p. xliv-xlv.

**Article IV, Section 2:** The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. * * * U.S.C., Vol. 1, p. xlv.

**Fifth Amendment:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S.C., Vol. 1, p. xlvi.

**Sixth Amendment:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; and to be confronted with the witnesses

against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

**Eighth Amendment:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S.C., p. xlvi.

**Fourteenth Amendment, Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S.C., Vol. 1, p. xlvii.

**UNITED STATES CODE**

**18 U.S.C. 876:** Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Post Office Department or knowingly causes to be delivered by the Post Office Department according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both. * * * Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both * * U.S.C., Vol. 4, p. 3585.

18 U.S.C. 3041: For any offense against the United States the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of the supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where the offender may be found, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case. A United States judge or commissioner shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any State judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his State but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest. U.S.C., Vol. 4, p. 3679.

18 U.S.C. 3231: The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the court of the several States under the laws thereof. U.S.C., Vol. 4, p. 3691.

18 U.S.C. 4244: Whenever after arrest and prior to the period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or

properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency to the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. * * * U.S.C., Vol. 4, p. 3729.

28 U.S.C. 1346(b): Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. U.S.C. Vol. 7, p. 5970.

28 U.S.C. 2674: The United States shall be liable respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to the judgment or for punitive damages.

42 U.S.C. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress.

## DISTRICT OF COLUMBIA CODE

11 D. C. Code 521(a): Except in actions or proceedings over which exclusive jurisdiction is conferred by law upon other courts in the District, the United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court and to any other jurisdiction conferred by law, has all the jurisdiction possessed and exercised by it on January 1, 1964, and has original jurisdiction of all: (1) civil actions between parties, where either or both of them are resident or found within the District; and (2) offenses committed within the District. D. C. Code, Vol. 1, p. 609.

11 D. C. Code 963(c): In all cases, whether cognizable in the Court of General Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or further examination. D. C. Code, Vol. 1, p. 657.

24 D. C. Code 301(a): Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after

such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after a hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined in a hospital for the mentally ill. D. C. Code, Vol. 2, p. 1259.

## UNITED STATES STATUTES AT LARGE

2 Stat. 107, §11: That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office for five years, and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall in all matters, civil and criminal, and whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed.

* * *

12 Stat. 580–581, §6: That the said Board of Police shall have power, and it shall be their duty, from time to time, to select and employ, from among the

duly appointed and qualified justices of the peace from the county of Washington, such justice or justices as may be required, and as it may deem proper, to sit in the respective station houses for the hearing of such charges as may be brought against persons arrested and carried to said station houses, and every person who shall be sentenced to pay a fine and costs, or either shall satisfy the same before being released by payment or by giving security to the satisfaction of the justice imposing such fine and costs. And when such security shall be taken, the justice shall be personally liable to said Board of Police for the amount of the fine and costs to be collected of him as in debt due and payable.

**31 Stat. 1190, §3:** There shall be ten justices of the peace in the District, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, for a term of four years, unless sooner removed as provided by law: *Provided*, That no person shall be appointed to said office unless he shall have been a bona fide resident of said District for the continuous period of at least five years immediately preceding his appointment, and shall either have held the office of justice of the peace in said District for a period of at least two years or shall have been engaged in the active practice of law before the Supreme Court of the District for a period of at least five years prior to his appointment * * *.

**35 Stat. 623, c. 134:** That the inferior court known as "justices of the peace" in the District of Columbia shall remain as now constituted, but shall hereafter be known as "the Municipal court of the District of Columbia." It shall consist of the present justices of the peace of said District, who shall serve as the judges of said court for the unexpired terms of their now existing commissions,

and who shall not be required to be recommissioned for such unexpired terms. Thereafter, and upon the expiration of the commission of any said members, his successor shall be appointed by the President of the United States, by and with the advice and consent of the Senate, for a term of four years, unless sooner removed as provided by law. * * * The said court and each member thereof shall exercise the same jurisdiction as was vested in them as justices of the peace immediately before the passage of this Act, and no more, and shall be governed by the laws then in force, except as said laws and said jurisdiction are expressly changed or enlarged thereon.

56 Stat. 190–191, c. 207, §1: That the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as "The Municipal Court for the District of Columbia". The Court shall consist of ten judges appointed by the President with the advice and consent of the Senate, one of whom shall be designated by the President as chief judge. The terms of the judges shall be in accordance with the following schedule: The first two appointments shall be for a term of ten years each; the second two appointments shall be for a term of eight years each; and the remaining six appointments shall be for a term of six years each. The judges of the Police and Municipal Courts of the District of Columbia holding office on the effective date of this Act shall, however, serve as judges of The Municipal Court for the District of Columbia hereby created until the expiration of their respective commissions and until their successors are appointed and qualified.The Court shall adopt and have a seal, and shall be a court of record.

76 Stat. 1171, §1: That the court established by the first section of this Act entitled "An Act to Consolidate the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, to be known as 'the Municipal Court for the District of Columbia', to create 'the Municipal Court of Appeals for the District of Columbia', and for other purposes", approved April 1, 1942, as amended (56 Stat. 190; D. C. Code, sec. 11–751), hereafter shall be known as "the District of Columbia Court of General Sessions." Whenever reference is made in any Act of Congress (other than this Act or the amendments made by this Act) or in any regulation to the Municipal Court for the District of Columbia, such reference shall be held to be a reference to the District of Columbia Court of General Sessions.